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April 22, 2016

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VIA ECF AND EMAIL

(Failla_NYSDChambers@nysd.uscourts.gov)

Honorable Katherine Polk Failla
United States District Court
Southern District of New York
40 Foley Square, Room 2103
New York, New York 10007

USDC SDNY
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Re: Herrera v. Taylor, *et al.*
S.D.N.Y. Docket No.: 16-CV-162 (KPF)
Our File No.: 733.231

MEMO ENDORSED

Dear Judge Failla:

This firm represents the defendants, Freddy C. Desormeaux (hereinafter “Dr. Desormeaux”) and Interfaith Medical Center (hereinafter “Interfaith”), in the above-referenced matter. We respectfully join in the request previously submitted by the co-defendant, CAMBA, Inc., for a pre-motion conference and for permission to institute a motion to dismiss on behalf of these defendants, pursuant to FRCP 12(b)(6), based upon the plaintiff’s failure to state a claim for which relief may be granted. This pre-motion letter is submitted in lieu of an Answer.

According to the Second Amended Complaint (Doc. No. 9), the plaintiff seeks to recover damages for various civil rights and constitutional violations, and common law malicious prosecution. Although difficult to decipher, the specific allegations against Dr. Desormeaux and Interfaith are contained in paragraphs 25, 26, 55, 56, 72, 88, 89, 91, 92, 94, 95, 102, 103, 104 and 105 of that pleading. Plaintiff claims that he was involuntarily hospitalized for psychiatric treatment following an altercation with the co-defendant Sergeant Williams at the CAMBA facility on or about January 12, 2016. The Second Amended Complaint does not set forth how long he was treated at that hospital.

Dr. Desormeaux and Interfaith respectfully request leave to move for dismissal because the plaintiff failed to sufficiently allege that these defendants, a private hospital and its employee, engaged in “state action” and, as a result, failed to state a viable cause of action under 42 U.S.C. § 1983 or the New York State Constitution. To the extent that the plaintiff also asserted a cause of action against these defendants for malicious prosecution, that claim must also fail because the Second Amended Complaint failed to set forth the basic elements of such a claim, i.e. that an actual criminal proceeding was commenced without probable cause, brought out of actual malice, and terminated in favor of the accused. None of the allegations in the Second

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Amended Complaint give rise to a valid federal or common law cause of action against Dr. Desormeaux or Interfaith. Accordingly, all claims against these defendants should be dismissed.

As this Honorable Court is well aware, a pre-motion conference has already been scheduled for May 4, 2016 at 2:00 p.m. It is respectfully requested that Dr. Desormeaux's and Interfaith's application for leave to move for dismissal be heard at that time in conjunction with the identical request previously submitted by the co-defendant.

Thank you in advance for Your Honor's consideration.

Very truly yours,

KAUFMAN BORGEESE & RYAN LLP



David Bloom, Esq. (DB1981)

cc: **VIA CERTIFIED MAIL & ECF**

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Defendants' request for a pre-motion conference is GRANTED. Dr. Desormeaux and Interfaith Medical Center may participate in the pre-motion conference scheduled for May 4, 2016, at 2:00 p.m.

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

Dated: April 25, 2016
New York, New York

HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE

A copy of this Order was mailed by Chambers to:

Victor M Herrera
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